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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER
05609-1001

November 26, 1997

Via Federal Express

William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

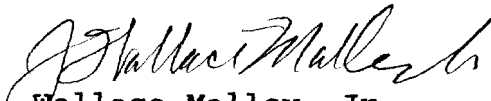
Re: Preemption of State and Local Zoning and
Land Use Restrictions on the Siting, Placement
and Construction of Broadcast Station
Transmission Facilities
MM Docket No. 97-182

Dear Mr. Caton:

Enclosed please find for filing and distribution to each of the Commissioners the original and nine copies of the Reply Comments of the State of Vermont Office of the Attorney General to the FCC's Notice of Proposed Rule Making In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities, MM Docket No. 97-182.

Thank you.

Sincerely yours,


J. Wallace Malley, Jr.
Deputy Attorney General

cc: Commonwealth of Massachusetts
Office of the Attorney General

Enclosures

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K. J. [illegible]
U.S. [illegible]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)	
)	
Preemption of State and Local)	MM Docket No. 97-182
Zoning and Land Use Restrictions)	
on the Siting, Placement and)	
Construction of Broadcast)	
Station Transmission Facilities)	

NOTICE OF PROPOSED RULE MAKING

Reply Comments of the Vermont Office of the Attorney General

I. Introduction

On October 30, 1997, the Vermont Office of the Attorney General filed Comments in opposition to Petitioners' proposed preemption Rule attached to the above captioned Notice of Proposed Rule Making as Appendix B. Subsequently, representatives of the Office of the Attorney General attended a public meeting on November 17, 1997 convened and chaired by Congressman Bernard Sanders to discuss Petitioners' proposed Rule governing digital broadcast facilities and the FCC's proposed Rule concerning the regulation of personal wireless service facilities. Representatives at the local, state, and federal level were present at the meeting as well as members of the public. Participants included, among others, representatives of Senator Patrick Leahy's office, Senator James Jeffords' office, Governor Howard Dean's office, Attorney General William Sorrell's office, the Vermont Environmental Board, the Vermont League of Cities and Towns, the Conservation Law Foundation, local citizen groups, and local planning boards.

As a consequence of the November 17, 1997 meeting and after reviewing selected Comments filed by other States in this matter, the Vermont Office of the Attorney General on behalf of the State of Vermont and all of its agencies and boards, hereby files the Reply Comments set forth below in opposition to Petitioners' proposed preemption Rule with respect to state and local zoning and land use restrictions on the siting, placement, and construction of broadcast station transmission facilities.

II. The Comments of the Commonwealth of Massachusetts Office of the Attorney General

The Vermont Office of the Attorney General adopts and fully supports as if its own the Comments of the Commonwealth of Massachusetts Office of the Attorney General dated October 29, 1997.¹

III. Additional Comments

Every individual present at the November 17, 1997 meeting was given an opportunity to voice their opinion concerning the proposed Rule. The Vermont Office of the Attorney General submits the following two additional comments after considering the statements made by citizens at the meeting.

A. Petitioners' proposed Rule fails to provide for the proper and timely disassembly and removal of broadcast station transmission facilities in the event that the current digital TV technology is subsequently replaced by satellite technology (or

¹With the exception of section 3 which primarily pertains to the impact of the proposed Rule on Massachusetts' administration of local zoning laws.

some yet to be identified technology that does not require the use of towers). The ramifications of this omission are self evident. In the name of expediency, Petitioners have proposed a Rule that would permit the industry to site, place, construct, and then **abandon** towers as the technology evolves with no corresponding obligation or duty to disassemble and remove towers when they become obsolete.

As more fully explained in the Comments of the State of Vermont Environmental Board, a communication or broadcast facility has traditionally required an Act 250 permit if it (a) was constructed above an elevation of 2,500 feet; or (b) was constructed on a tract of land greater than 1 acre in size. If the municipality in which the facility is to be constructed has adopted permanent zoning and subdivision, then the jurisdictional threshold increases from 1 acre to 10 acres. Since July 1, 1997, in addition to the aforementioned, any broadcast or communication facility that includes the construction of a support structure of 20 feet or more requires an Act 250 permit. The review process extends to any ancillary construction such as equipment buildings, foundation pads, cables, wires, antennas or hardware, and all means of ingress and egress to the support structure. Significantly, unlike Petitioners' proposed Rule, Vermont's Act 250 process allows a district commission to incorporate in the permit as a condition that compels the owner to disassemble and remove the tower within a predetermined time period if certain specified events occur.

B. Petitioners' proposed Rule would eliminate currently available opportunities for state and local officials to meet directly with industry representatives in order to resolve tower siting, placement, and construction issues. At least one citizen explained that his community had highly positive results when it invited the industry representative to visit, review, and discuss potential sites. Preemption is not warranted in Vermont given this type of cooperation and Act 250's long standing regulation of issues related to communication and broadcast facilities, its sophisticated understanding of these issues, and the historically successful deployment of personal wireless services in Vermont.

Dated at Montpelier, Vermont this 26th day of November, 1997.

State of Vermont
Office of the Attorney General

By: 
J. Wallace Malley, Jr.
Deputy Attorney General

By: 
Mary K. McCabe